

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, <i>ex rel.</i>	)	
State Engineer	)	69cv07941-MV/KK
	)	RIO CHAMA STREAM SYSTEM
Plaintiff,	)	
	)	Section 3, Rio Cebolla
vs.	)	
	)	Subfile Nos. CHCB-001-0007,
ROMAN ARAGON, <i>et al.</i> ,	)	CHCB-002-0001B, CHCB-002-0002,
	)	CHCB-002-0009
Defendants.	)	
	)	

**INITIAL DISCLOSURES**

**CHARLIE AND GERALDA M. CHACON  
DELFIN O. AND FRANCES S. CHACON TRUST**

Pursuant to the December 16, 2014 Revised PreTrial Order (No. 11064) and F.R.Civ.P.

26(a) the Defendants hereby makes the following initial disclosures:

1. The name, address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses.

The following individuals may have or might develop discoverable information that the Defendants may use to support their claims or defenses:

- a) Charlie Chacon, 1007A South Prince Drive, Espanola, NM 87532, (505) 753-4795.
- b) Geralda M. Chacon, 1007A South Prince Drive, Espanola, NM 87532, (505) 753-4795.
- c) Mary C. Martinez, 200 Romans Lane, Bloomfield, N.M. 87413, (505) 632-2838.
- d) Gerald Chacon, 1007C South Prince Drive, Espanola, NM 87532 (505) 753-6231.



- e) Edmund Sanchez, P.O. Box 223, Cebolla, NM 87518, (575) 684-2245.
- f) Carlos Chacon, P.O. Box 931, Espanola, NM 87532, (505) 927-9968.
- g) Delfin Quintana, P.O. Box 156, Cebolla, NM 87518. (575) 684-2435.
- h) Tony Valdez, Taos County Ag Extension Agent, Los Luceros, NM  
Arriba County, NMSU, Abiquiu, NM 87510, (505) 685-4523.
- i) Charlie Hibner, retired soil scientist NRCS 505 470-5775; Cebolla, NM 87518
- j) Sam Smallege, PhD. NMSU Extension Range Specialist, P.O. Box 30001 MSC,  
3AE, Las Cruces, N.M. 88003, (505) 646-5944
- k) Stephen D. Hardin, Surveyor, 1963 Ottowi Road, Santa Fe, NM 87505, (505)  
989-4251
- l) Patrick Torres, Santa Fe County Ag Extension Agent, NMSU, 3229 Rodeo Road,  
Santa Fe, NM 87505, (505) 471-4711
- m) Malcom Ebright, Guadalupita, New Mexico 87722

2. A copy of, or a description by category and location, or all documents, data compilations and tangible things that are in the possession, custody or control of the party and that the disclosing party may use to support its claims or defenses.

The Defendants may use the following documents, data compilations and tangible things to support its claims or defenses. The Defendants reserve their right to assert in response to any discovery request any claims of privilege or immunity that are applicable to all or part of any of the identified materials. Unless otherwise noted, the identified materials have been produced to the State Engineer or are otherwise located in the Defendants' Attorney, Law Offices of Ted J. Trujillo, #0C1 SF County Road 129, Chimayo, New Mexico 87522 (505) 351-1632.

**A. Survey Exhibits**

1. Turley Survey Map: "Map of the El Rito de Tanque – Rito de La Piedra Ditch System – Commission of the Acequia Pinavetal et al – Claimants", "Declaration No. 0636 Received June 10, 1949 Office of the State Engineer and Application No. 2686, Filed 2738 September 21, 1949 Office of the State Engineer" and "Declaration No. 0636 Amended, 0636 B, & 0636 C Received June 10, 1949 Office of the State Engineer and Application No. 2686 & 2738, Filed 2738 September 21, 1949 Office of the State Engineer" with handwritten notes, signed and dated June 10, 1949 by Walter G. Turley.

2. New Mexico Office of the State Engineer, Rio Chama Stream System Hydrographic Survey Report, Section 3 Rio Cebolla Section, August 11, 2000.

3. "Exhibit A Assembled and Prepared By Stephen D. Hardin, Land Surveyor, " Lands of Charlie and Jerald Chacon", showing Defendants' lands irrigated by the Pinabetal, the Sanchez Ditch and the Old Valdez Ditch, prepared July 14, 2008.

**B. Other Reports**

1. "Cebolla Vegetation Comparison" prepared by Range Improvement Task Force, New Mexico State University December 1, 2009, Based on Rapid Assessment Methodology and Species Composition Analysis, Conducted by Range Improvement Task Force, New Mexico Cooperative Extension Service, November 11, 2009.

**C. Aerial Photography (None)**

**D. Photographs**

1. Chacon Family LLC about 200 photographs of claimed irrigated acreage, taken on July 31, 2009.
2. Two Old Black and White Photo of Maximiana Lopez Chacon, Simon Lopez and Aquilino Valdez, with hay production.
3. One Old Black and White Photo of Patricio Chacon with Gormans on hay field.
4. Three color photos of old plumbing at Saw Mill.
5. Three color photos, A, B and C, from 2000s, Rito de La Piedra to Saw Mill tank.
6. Video of Old Valdez Ditch running down to Alfalfita field.

**E. Water Rights Files**

1. OSE Water Rights Files No. 2738, 0646 and 0492.

**F. Depositions / Other Documents**

1. Deposition of Charlie Chacon, 69cv07941-BB, December 17, 2009.
2. Deposition of Mary Chacon Martinez, 69cv07941-BB, January 17, 2011.
3. Affidavits: Patricio Chacon, dated March 15, 1973; Pedro Trujillo y Chacon, dated October 1, 1966; Charlie Chacon, dated March 28, 2001; Gabriel L. Valdez, Jr., dated October 6, 2004; Ubaldo Valdez, dated October 13, 2003; Gilbert A. Chacon, dated August 14, 2003; Mary C. Martinez, dated August 13, 2004; Delfin Quintana, dated December 31, 2004.
4. Letter from H.J. Guthmann, Attorney at Law, to Patricio Chacon, April 3, 1951.
5. Letter from H.J. Guthmann, Attorney at Law, to Patricio Chacon, dated July 19, 1951.
6. Spanish handwritten letter from Medardo Sanchez to H.J. Guthmann, July 2, 1957.
7. Statement of Old Water Rights filed June 27, 1932 by Cebolla property owners.
8. Settlement and Irrigation on the Rio Cebolla (Section 3, Rio Chama Hydrographic Survey), dated August, 1999, Report by John O. Baxter, Ph.D.
9. Settlement North of Abiquiu Leading to Settlement and Irrigation at Cebolla by Malcolm Ebright, dated June 8, 2006, including Maps by Stephen D. Hardin.
10. Homestead Records for Juan Desiderio Valdez and Jose Leandro Montoya.
11. 1860 Agricultural Census and 1880 Census.
3. The identity of any witness that may be used at trial to present evidence under Federal Rules of Evidence 702, 703 or 705.

The Defendants may call the following witnesses to present expert testimony.

- A. Stephen D. Hardin, retired BLM Cadastral Surveyor will testify about the features shown on his demonstrative survey of the Defendants' properties and the subfiles. A copy of the survey is attached as Exhibit A.
- B. Sam Smallege, PhD. NMSU Extension Range Specialist. Dr. Smallege will testify about the Range Improvement Task Force site visit to the Chacon's subject properties. A copy of the report is attached as Exhibit B.
- C. Charlie Hibner, retired NRCS soil scientist, 505 470-5775; Cebolla, NM 87518 will testify about the nature of the Tia Josefa permanent pasture, identified as a "seeped" area by the OSE.

- D. Malcolm Ebright, Attorney at Law. Mr. Ebright will testify about the history of Settlement of the Cebolla, its origins and development, including agricultural activity and irrigation.
4. Summary of the facts and opinions to which the witness is expected to testify.
- A. Stephen D. Hardin, Surveyor, will testify about the features of various areas of the Defendants' subfiles as well as neighboring tracts owned by other irrigators, based upon his review of the documentation as annotated on the exhibit. He is also called upon to evaluate the aerial photographs when they are available and to form opinions as to the evidence of irrigation on the subject subfiles.
- B. Sam Smallege, PhD. Dr. Smallege was as a member of the Range Improvement Task Force that evaluated the "Tia Josefa" pasture land and the "Alfalfita" field for evidence of cultivation and irrigation and he will testify about the findings that support his opinions.
- C. Charlie Hibner, retired NRCS soil scientist, will testify about the classification of the Tia Josefa pasture and its relation to seasonal irrigation and intervening drought, based on his field experience and familiarity with similar pastures in the area.
- D. Malcolm Ebright, Attorney, will testify about the early settlement of the Cebolla area, including the families of the Defendants, as well as neighboring tracts owned by other settlers, and review the documentation used in his report, "Settlement North of Abiquiu leading to Settlement and Irrigation at Cebolla" and discuss the documentary evidence for the dates of settlement and development.

LAW OFFICES OF TED J. TRUJILLO

/s/ Ted J. Trujillo

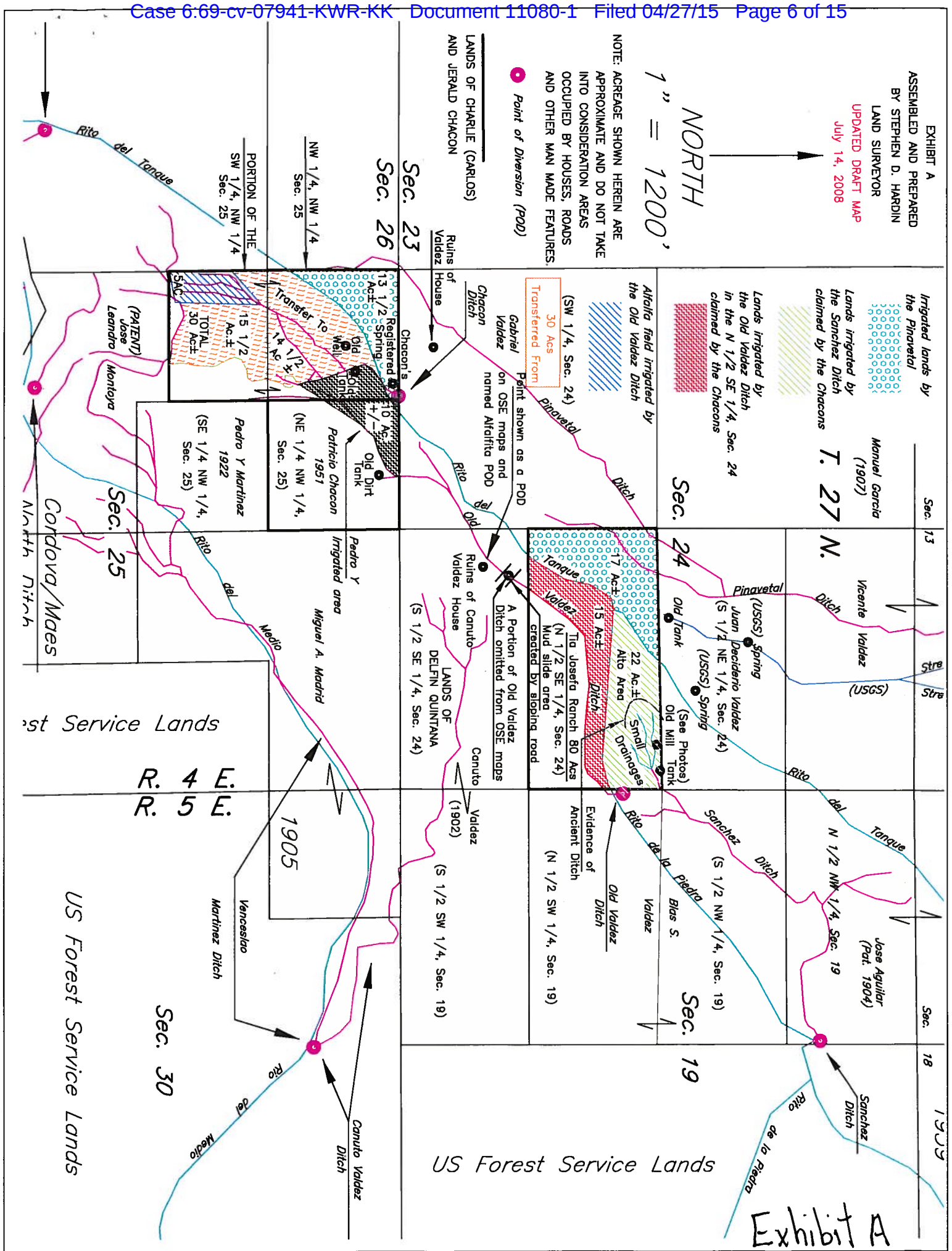
By: \_\_\_\_\_

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*NORTH*  
1" = 1200'

NOTE: ACREAGE SHOWN HEREIN ARE APPROXIMATE AND DO NOT TAKE INTO CONSIDERATION AREAS OCCUPIED BY HOUSES, ROADS AND OTHER MAN MADE FEATURES.

- Point of Diversion (POD)

LANDS OF CHARLIE (CARLOS)  
AND JERALD CHACON

*US Forest Service Lands*

**Cebolla Vegetation Comomparison**

**Prepared by  
Range Improvement Task Force  
New Mexico State University  
December 1, 2009**

**Based on Rapid Assessment Methodology and Species Composition  
Analysis**

**Conducted by  
Range Improvement Task Force  
New Mexico Cooperative Extension Service  
November 11, 2009**

Exhibit B



## Introduction

The Range Improvement Task Force was asked to do monitoring to develop a species composition and relate vegetation species in areas that are irrigated vs. areas that are non-irrigated. Gerald Chacon is the ranch manager that showed us where the pastures were located. This site was located east of the town of Cebolla about 2 miles. This area was located in the Carson National Forest, but is private land acquired through the Homestead Act.

## Methods

Each site was evaluated by using the Rapid Assessment Methodology (RAM). The Range Improvement Task Force (RITF) and range science faculty from the Animal and Range Sciences Department at New Mexico State University (NMSU) developed the RAM method as a prompt assessment tool capable of efficiently gathering data and information necessary to make adaptive management decisions. Mr. Gerald Chacon's allotments were developed with these monitoring sites and were marked with t-posts at each site. These sites were then evaluated with the RAM by running a 100 point transect that indicates the cover class, species, and species height. Then photos were taken of the landscape level and ground level. After the RAM was finished more points were taken to capture and record all species present on the pastures. These were assigned relative frequency estimates by calculation of the number of hits for each species.

## Results

A summary of the data collected on each of the sites at the Chacon Allotment, along with the photos at each site, can be found in Appendix 1:

- ❖ **Table 1.** RAM transect data on Burns irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.
- ❖ **Table 2.** RAM data analysis on Burns non-irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.
- ❖ **Table 3.** The species composition table developed on Burns irrigated and non-irrigated pastures from relative frequency estimates by calculating the number of hits for each species.
- ❖ **Table 4.** RAM transect data on Tia Josefa irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.



- ❖ **Table 5.** RAM transect data on Tia Josefa Range Site Non-irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.
- ❖ **Table 6.** The species composition table developed on Tia Josefa irrigated and non-irrigated pastures from relative frequency estimates by calculating the number of hits for each species
- ❖ **Table 7.** RAM transect data on Alfalfita Irrigated Pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.
- ❖ **Table 8.** The species composition table developed on Alfalfita irrigated pasture from relative frequency estimates by calculating the number of hits for each species
- ❖ **Figure 1.** Burns irrigated pasture with one photo taken at ground level and one photo at landscape level.
- ❖ **Figure 2.** Burns non-irrigated pasture with one photo taken at ground level and one photo at landscape level.
- ❖ **Figure 3.** Tia Josefa Alto Irrigated Pasture with one photo taken at ground level and one photo at landscape level.
- ❖ **Figure 4.** Tia Josefa Old Valdez Irrigated Pasture with one photo taken at ground level and one photo at landscape level.
- ❖ **Figure 5.** Tia Josefa non-irrigated with one photo taken at ground level and one photo at landscape level.
- ❖ **Figure 6.** Alfalfita irrigated pasture with one photo taken at ground level and one photo at landscape level.

**Table 1.** RAM transect data on Burns irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.

Date	Pasture	Location	Cover Classes					Stubble Height					Top Five Species & # Hits					Pellet Count			
			V	B	L	R	XS	S	S/M	M	T	1	2	3	4	5	Cattle	Elk	Horse	Deer	
11/11/2009	BURNS IRRIGATE	CEBOLLA	41	16	43			3.8	10.3			POPR	AGSM								
												57	43								

Avg. lbs/Acre

633.6

**Figure 1.** Burns irrigated pasture with one photo taken at ground level and one photo at landscape level.**Burns Non-irrigated Pasture****Table 2.** RAM data analysis on Burns non-irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.

Date	Pasture	Location	Cover Classes					Stubble Height					Top Five Species & # Hits					Pellet Count			
			V	B	L	R	XS	S	S/M	M	T	1	2	3	4	5	Cattle	Elk	Horse	Deer	
11/11/2009	Burns Range	Cebolla	29	12	53	6		2.2	4.8	7.4		POPR	ELEL	AGCR	BOGR	AR					
												40	23	19	9	4					

Avg. lbs/Acre

224.64

**Figure 2.** Burns non-irrigated pasture with one photo taken at ground level and one photo at landscape level.

The Burns irrigated versus non-irrigated shows that vegetation cover class had a higher percent on the irrigated site. The rest of the cover class were approximately the same except rocks being a little more abundant on the non-irrigated site. There was also more diversity in the species on the non-irrigated compared to the irrigated with is expected since crops are usually grown for more select species. In addition, the Burns irrigated pasture had a standing crop of nearly three times as many pounds per acre as compared to the non-irrigated.

**Table 3.** The species composition table developed on Burns irrigated and non-irrigated pastures from relative frequency estimates by calculating the number of hits for each species

<b>Irrigated</b>		<b>Non-irrigated</b>	
<b>Burns Irrigated</b>	<b>Percent (%)</b>	<b>Burns Range</b>	<b>Percent (%)</b>
Kentucky Bluegrass	25	Kentucky Bluegrass	15
Western Wheatgrass	60	Western Wheatgrass	25
Gambel's Oak	5	Crested Wheatgrass	1
Sage brush	2	Bluegrama	35
Rocky Mt. Juniper	1	Bottlebrush squirrel-tail	10
Cichen	2	Sage brush	2
Timothy	2	Rocky Mt. Juniper	2
Bottlebrush Spuirrel-tail	1	Cichen	1
other forbs	2	Thistle	1
Total	100	Turpentine bush	3
		Indian Ricegrass	2
		Cactus	1
		Other forbs	2
		Total	100



**Table 4.** RAM transect data on Tia Josefa irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.

Date	Pasture	Location	Cover Classes					Stubble Height					Top Five Species & # Hits					Pellet Count		
			V	B	L	R	XS	S	S/M	M	T	1	2	3	4	5	Cattle	Elk	Horse Deer	
11/11/2009	CHACON 1	CEBOLLA	57	2	41		6.4	9.6	12.2		POPR	AGSM	CAREX	BOGR	MUHL		8			
											47	44	3	2	2					

Avg. lbs/Acre

1025.28

**Figure 3.** Tia Josefa Alto Irrigated Pasture with one photo taken at ground level and one photo at landscape level.



**Figure 4.** Tia Josefa Old Valdez Irrigated Pasture with one photo taken at ground level and one photo at landscape level.



#### Tia Josefa Non-irrigated Pasture

**Table 5.** RAM transect data on Tia Josefa Range Site Non-irrigated pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.

Date	Pasture	Location	Cover Classes					Stubble Height					Top Five Species & # Hits					Pellet Count			
			V	B	L	R	XS	S	S/M	M	T	1	2	3	4	5	Cattle	Elk	Horse	Deer	
11/11/2009	CHACON 3	CEBOLLA	28	6	62	4		4.9	5.7	11.5		POPR	CAREX	AGCR	FEAR	MUHL		4	2		
												46	33	18	2	1					

Avg. lbs/Acre

82.56

**Figure 5.** Tia Josefa non-irrigated with one photo taken at ground level and one photo at landscape level.



These sites show that the vegetation cover class is nearly double on the irrigated sites vs. the non-irrigated. The amount of bare ground was also a little more in the non-irrigated. While both sites had at least 5 different species, the irrigated pastures had 91% of vegetation consisting of Kentucky Bluegrass (POPR) and Western Wheatgrass (AGSM). This shows less diversity than the non-irrigated where diversity is important. In addition the Tia Josefa irrigated pasture had a standing crop that was over twelve times as many pounds per acre as the non-irrigated Tia Josefa pasture.

**Table 6.** The species composition table developed on Tia Josefa irrigated and non-irrigated pastures from relative frequency estimates by calculating the number of hits for each species

Irrigated			
Tia Josefa Alto	Percent (%)	Tia Josefa Old Valdez	Percent (%)
Gambel's Oak	10	Gambel's Oak	8
Western Wheatgrass	30	Western Wheatgrass	25
Blue Grama	2	Bluegrama	3
Brome	5	Brome	3
Kentucky Bluegrass	35	Kentucky bluegrass	40
Carex	5	Carex	6
Timothy	2	Timothy	1
BottleBrush Squirrel-tail	1	Ponderosa	1
Ponderosa	2	Crested Wheatgrass	5
Wild Lilli	1	Mountain Brome	2
Bluestem	1	Muhlenbergia	1
Muhlenbergia	1	Aster	3
Aster	5	Other forbs	2
Total	100	Total	100

Non-Irrigated	
Tia Josefa Range Site	Percent (%)
Gambel's Oak	10
Western Wheatgrass	25
Bluegrama	1
Brome	1
Kentucky Bluegrass	45
Carex	5
Rocky Mt. Juniper	2
Bottlebrush Squirrel-tail	1
Ponderosa	1
Cichen	2
Muhlenbergia	1
Aster	3
Other Forbs	3
Total	100



**Alfalfita Irrigated Pasture****Table 7.** RAM transect data on Alfalfita Irrigated Pasture evaluated on November 11, 2009 by Stephen Gomez and Carson Taylor.

Date	Pasture	Location	Cover Classes					Stubble Height					Top Five Species & # Hits					Pellet Count		
			V	B	L	R	XS	S	S/M	M	T	1	2	3	4	5	Cattle	Elk	Horse	Deer
11/11/2009	ALFALFIT A	CEBOLLA	32	28	40			2.3	5.8			AGCR	BOGR	POPR	CAREX					
												80	15	4	1					
<b>Avg. lbs/Acre</b>																				
<b>188.16</b>																				

**Figure 6.** Alfalfita irrigated pasture with one photo taken at ground level and one photo at landscape level.

Alfalfita was a unique case where it historically had been used for a family garden or crop. This site was 80% Crested wheatgrass (AGCR) suggesting a seeding for disturbance such as farming. This site is still recovering suggested by the high percent of bare ground, but seems to be improving because of the higher percentage of vegetation and litter cover class. As far as standing crop, the Alfalfita pasture had more production than the Tia Josefa non-irrigated pasture but less than the Burns non-irrigated pasture. This pasture did not have the standing crop like the other irrigated pastures. This could be due to many variables such as grazing, lack of current water, reseeded or planted sooner, etc.

**Table 8.** The species composition table developed on Alfalfita irrigated pasture from relative frequency estimates by calculating the number of hits for each species

Irrigated	
Alfalfita	Percent (%)
Kentucky Bluegrass	5
Crested Wheatgrass	50
Bluegrama	15
Sand Dropseed	8
Muhlenbergia	10
Sage brush	3
Turpentine bush	5
Bottlebrush Squirrel-tail	2
Other forbs	2
Total	100

## Discussion

Throughout the sites, the areas that was called irrigated showed more ground cover with one or two species being the dominate grass cover. The non-irrigated sites had more diverse vegetation with less ground cover when compared to the irrigated pastures. This will happen because most crops or irrigated land is seeded or farmed for only a few species of vegetation. When looking through-out the sites a noticeable difference in tree standing crop and stubble heights was present between the assumed irrigated and non-irrigated. These two areas where separated by a defiant boundary line between these irrigated and non-irrigated sites. The sites where dominated by Western Wheatgrass and Poa Pretensis on the irrigated sites. The non-irrigated, range pastures where located adjacent to irrigated pastures. The non-irrigated pastures where dominated by Poa Pretensis, Bottlebrush Squirrel-tail, and Crested Wheatgrass. The irrigated pastures also had a larger number of vegetation and litter compared to the non-irrigated pastures that consisted of more bare ground and litter.

## Literature Cited

- Allison, C.D., J.L. Holechek, J.C. Boren, T.T. Baker, J.M. Fowler, J.K. Ashcroft, and A.P. McIntosh. 2003. Using the Rapid Assessment Methodology (RAM) to make adaptive management decisions. Range Improvement Task Force Report No. 58. New Mexico State University. Las Cruces, NM.
- Allison, C.D., J.L. Holechek, T.T. Baker, J.C. Boren, J.M. Fowler, J.K. Ashcroft. 2007. Rapid Assessment Methodology for proactive rangeland management. *Rangelands* 29(2): 45-50
- Holechek, J.L., R.D Pieper and C.H. Herbel. 2001. *Range Management Principles and Practices*. Prentice Hall New Jersey
- Holecheck, J.L., and D. Galt. 2004. More on stubble height guidelines. *Rangelands* 26:3-7